Supreme Court, U.S.
FILED

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No. _____ 981679 APR 1 1999

In The

Supreme Court of the United States

October Term, 1998

RAY ALAN BLAIR,

Petitioner,

v.

STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of Nevada

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A.

Whether a state's conditioning the right to be heard in court upon the granting of a stay order is consistent with the obligations imposed and the rights afforded by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

B.

Whether the State of Nevada may impose a disparate impact upon citizens without a rational basis, under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

C.

Whether the Nevada Supreme Court erred when it dismissed BLAIR'S appeal for mootness, causing BLAIR to incur significant collateral consequences and the controversy is capable of repetition yet evading review.

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PETITION FOR WRIT OF CERTIORARI

RAY ALAN BLAIR (BLAIR) respectfully prays that a Writ of Certiorari issue to Review the Judgment and Opinion of the Nevada Supreme Court entered in this proceeding February 9, 1999, in order to prevent the State Department of Motor Vehicles and Public Safety [DMV] from forfeiting BLAIR'S driver's license in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

OPINIONS BELOW

The Decision of the Nevada Supreme Court that gives rise to the Petition is an unpublished order dismissing appeal. It is reprinted in the Appendix ("App.") at pages App. 1-App. 2.

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257(3). Certiorari is available for " . . . any right . . . claimed under the constitution. . . . "

Review should be granted under Supreme Court Rule 10(c) because the Nevada Supreme Court decided an important federal question in a way that conflicts with relevant decisions of this Court and creates a conflict within the Ninth Circuit itself on the mootness doctrine. *See Graham v. State,* 633 P.2d 211 (AK 1981). The issue presented here affects every individual in the United States who travels by automobile in Nevada.

CONSTITUTIONAL AND STATUTORY PROVISIONS

FOURTEENTH AMENDMENT

> Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

NRS 484.387(3):

> **Driving under the influence of intoxicating liquor or controlled substance: Hearing by department; additional temporary license; judicial review; cancellation of temporary license.**
>
> . . .
>
> 3. If, after the hearing, the order of revocation is affirmed, the person whose license, privilege or permit has been revoked is entitled to a review of the same issues in district court in the same manner as provided by chapter 233B of NRS. The court shall notify the department upon the issuance of a stay and the department shall issue an additional temporary license for a period which is sufficient to complete the review.
>
> . . .
>
> (Added to NRS by 1969, 594; A 1971, 83; 1973, 485, 1504; 1975, 1463; 1981, 85; 1983, 1077; 1985,

1949; 1987, 1456; 1989, 1655; 1991, 1590; 1995, 1887)

NRS 233B.140:

Procedure for stay of final decision; ruling by court.

1. A petitioner who applies for a stay of the final decision in a contested case shall file and serve a written motion for the stay on the agency and all parties of record to the proceeding at the time of filing the petition for judicial review.

2. In determining whether to grant a stay, the court shall consider the same factors as are considered for a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure.

3. In making a ruling, the court shall:

(a) Give deference to the trier of fact; and

(b) Consider the risk to the public, if any, of staying the administrative decision.

The petitioner must provide security before the court may issue a stay.

(Added to NRS by 1967, 810; A 1977, 58; 1989, 1652)

NRS 233B.150:

Appeal from final judgment of district court.

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the supreme court. The appeal shall be taken as in other civil cases.

(Added to NRS by 1967, 811)

NEVADA RULES OF APPELLATE PROCEDURES; RULE 16:

SETTLEMENT CONFERENCES IN CIVIL APPEALS

(a) *Submission of Case to Settlement Conference.* Any civil appeal may be scheduled for a settlement conference. The Supreme Court, or any person designated by the court, shall determine whether to schedule an appeal for a settlement conference. The settlement conference shall be presided over by a senior justice, senior judge, or other judicial officer appointed by the Supreme Court, who shall be designated the settlement judge.

(b) *Scheduling of Settlement Conference.* The clerk of the Supreme Court shall notify the parties of the scheduling of a settlement conference, and of the name of the presiding settlement judge. No later than thirty (30) days from the date of the clerk's notice, the settlement judge will schedule the appeal for a settlement conference.

(c) *Suspension of Rules.* The clerk's issuance of a scheduling notice automatically stays the time for filing a request for transcripts under Rule 9, and for filing briefs under Rule 31. Issuance of the notice also stays the preparation and filing of any transcripts ordered pursuant to Rule 9.

(d) *Settlement Statement.* Each party to the appeal shall submit a settlement statement directly to the settlement judge within fifteen (15) days from the date of the clerk's scheduling notice. A settlement statement shall not be filed

in the Supreme Court and shall not be served on opposing counsel.

A settlement statement is limited to five (5) pages, and shall concisely state: (1) the relevant facts; (2) the issues on appeal; (3) the argument supporting the party's position on appeal; (4) the weakest points of the party's position on appeal; (5) the settlement proposal that the party believes would be fair or would be willing to make in order to conclude the matter; and (6) all matters which, in counsel's professional opinion, may assist the settlement judge in conducting the settlement conference. Form 10 in the Appendix of Forms is a suggested form of a settlement statement.

(e) *Settlement Conference.* The settlement conference shall be held at a time and place designated by the settlement judge. Counsel for all parties and their clients must attend the conference. The settlement judge may, for good cause shown, excuse a client's attendance at the conference, provided that counsel has written authorization to resolve the case fully or has immediate telephone access to the client.

The agenda for the settlement conference and the sequence of presentation shall be at the discretion of the settlement judge. A subsequent settlement conference may be conducted by agreement of the parties or at the direction of the settlement judge.

If a settlement is reached, the parties shall immediately execute a settlement agreement and a stipulation to dismiss the appeal, and shall file the stipulation to dismiss with the clerk of the Supreme Court.

(f) *Failure to Participate in Settlement Conference; Frivolous Appeals.* The failure of a party, or the party's counsel, to participate in good faith in the settlement conference process is grounds for sanctions against the party, the party's counsel, or both. Sanctions include, but are not limited to, payment of attorney's fees and costs of the opposing party, dismissal of the appeal, or reversal of the judgment below.

(g) *Settlement Conference Report.* Within ten (10) days from the date of any settlement conference, the settlement judge shall prepare and file with the clerk of the Supreme Court a settlement conference report. Such report must state the result of the settlement conference, but shall not disclose any matters discussed at the conference. When the settlement judge determines that a party has failed to participate in good faith in the settlement conference process, the report must state the basis for the determination and recommend an appropriate sanction. The Supreme Court may require a party to show cause why a recommended sanction should not be adopted by the court. The Supreme Court may defer acting on the recommendation until after it has rendered a decision on the appeal.

(h) *Confidentiality.* Papers or documents prepared by counsel or a settlement judge in furtherance of a settlement conference, excluding the settlement conference report, shall not be available for public inspection or submitted to or considered by the supreme court. Matters discussed at the settlement conference and papers or documents prepared pursuant to this Rule shall not be admissible in evidence in any judicial proceeding and shall not be subject to

discovery. (Adopted eff. 2-25-97; Amended 12-1-97, eff. 1-30-98.)

STATEMENT OF THE CASE

The Petitioner, RAY ALAN BLAIR, hereinafter "BLAIR," was arrested under federal law for driving under the influence of intoxicating liquor [DUI]. The incident occurred solely on federal property, the Lake Mead National Recreation Area. Ignoring federal law, the park ranger borrowed the Nevada Implied Consent Law to obtain a breath alcohol test and revoked BLAIR'S driver's license.

BLAIR requested a state administrative hearing to challenge the propriety of the license revocation. Pursuant to law, an automatic stay was issued covering the administrative proceedings only. The hearing examiner upheld the revocation of BLAIR'S driver's license. BLAIR filed for review in the state district court and his written request for a stay of the revocation action was denied. BLAIR requested and was granted an expedited briefing schedule.[1] Without oral argument, the district court denied BLAIR'S petition for relief. BLAIR, exercising his right under NRS 233B.150, filed an appeal to the Nevada Supreme Court. Again, BLAIR was unable to obtain a

[1] BLAIR was attempting to exercise his lawful right to court review, both in the district and supreme courts, as fast as possible to avoid a dismissal on mootness grounds. *See Langston v. State, Department of Motor Vehicles*, 110 Nev. 342, 871 P.2d 362 (1994). BLAIR believes that *Langston* was incorrectly decided.

stay order. Pursuant to Nevada Rules of Appellate Procedure [NRAP] Rule 16, briefing was suspended and BLAIR'S appeal was diverted to the mandatory settlement conference for civil cases.[2] A settlement could not be reached by the parties.[3] The settlement conference judge notified the Nevada Supreme Court that a settlement could not be reached.

Since BLAIR served 90 days without his driver's license, the State filed a motion to dismiss his appeal under the guise of mootness.[4] BLAIR filed an opposition arguing that his case was not moot under federal law and that the Fourteenth Amendment of the United States Constitution mandate that he be allowed access to the courts so that his case can be heard on the merits.[5] The Nevada Supreme Court granted the State's motion and dismissed BLAIR'S appeal. Thus, the instant request for certiorari has been filed in this Court.

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[2] There are no provisions for a stay of the revocation action for Rule 16 proceedings. A 90-day revocation action will expire before these mandatory settlement proceedings are completed.

[3] The State's counsel will not negotiate these types of cases. The only settlement available is for BLAIR to voluntarily dismiss his appeal. Therefore, Rule 16 diversions work to the prejudice of individuals in BLAIR'S situation.

[4] After the 90 days revocation period has run, the individual may apply for reinstatement; however, not without suffering collateral consequences. *See* Argument 4, *infra*.

[5] *See* attached Blair's opposition to state's motion to dismiss appeal. App. 3-7.

REASONS FOR GRANTING THE WRIT

I. NRS 233B.140 VIOLATES DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.

The United States Supreme Court has consistently held that the suspension of an issued driver's license involves state action which adjudicates important interests of licensees and, accordingly, licenses may not be revoked or suspended without due process. *Bell v. Burson*, 404 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971); *Jennings v. Mahoney*, 404 U.S. 25, 92 S.Ct. 180, 30 L.Ed.2d 146 (1971). *See also, State, Dept. Mtr. Vehicles v. Vezeris*, 102 Nev. 232, 720 P.2d 1208 (1986)("It is well settled that suspension or revocation of a driver's license implicates a protectable property interest under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.") Procedural due process guarantees individuals the opportunity to be heard on relevant issues.[6] *Boddie v. Connecticut*, 401 U.S. 371, 377-78, 91 S.Ct. 780, 785-86 (1971). BLAIR was denied the right to be heard.

In Nevada, the license revocation period expires before the court is scheduled to review the merits unless

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[6] BLAIR had a valid issue on appeal. It was error for the federal park ranger to borrow the Nevada Implied Consent Law to revoke BLAIR'S driver's license. The court in *U.S. v. Love*, 141 F.R.D. 315 (D.Colo. 1992) held that the federal implied consent controls on federal property ("Even if a state implied consent law could be assimilated, it would be superceded by the federal law."). *See also, U.S. v. Rogers*, 926 F. Supp. 1000 (D.Colo. 1996) ("This section is the federal implied consent law that is applicable to all federal property. *U.S. v. Love*, 141 F.R.D. 315 (D.Colo. 1992). This section supersedes any state law that requires a chemical test be taken.") *Rogers* at 1002.

a stay is granted. Under current law, a stay can only be granted if the Petitioner satisfies NRS 233B.140. The statute reads,

> **Procedure for stay of final decision; ruling by court.**
>
> 1. A petitioner who applies for a stay of the final decision in a contested case shall file and serve a written motion for the stay on the agency and all parties of record to the proceeding at the time of filing the petition for judicial review.
>
> 2. In determining whether to grant a stay, *the court shall consider the same factors as are considered for a preliminary injunction under Rule 65 of the Nevada Rules of Civil Procedure.*
>
> 3. In making a ruling, the court shall:
>
> (a) Give deference to the trier of fact; and
>
> (b) Consider the risk to the public, if any, of staying the administrative decision. The Petitioner must provide security before the court may issue a stay. (1967, p.810; 1977, p.58; 1989, ch.716, Sec.7, p.1652) (Emphasis added)

Clearly, a person may not be able to meet the standard or threshold for a stay, yet if heard, could prevail on the merits. The current statutory scheme is illusory and denies these individuals an opportunity to be heard in court because it results in the appeal being dismissed for mootness.

A law or procedure which conditions judicial review upon being able to obtain a stay is not "meaningful" and violates due process under the Fourteenth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). The United States Court of Appeals for the Ninth Circuit stated in *Clements v. Airport Authority of Washoe County*, 69 F.3d 321 (9th Cir. 1995),

> The right to procedural due process is "absolute," and "the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey v. Piphus*, 435 U.S. 247, 266-67, 98 S.Ct. 1042, 1054, 55 L.Ed.2d 252 (1978). Thus the "absolute" right to adequate procedures stands independent from the ultimate outcome of the hearing. See *Carey*, 435 U.S. at 266-67, 98 S.Ct. at 1054. *Id.* at 333.

Since the right to be heard in court is dependent solely upon being able to obtain a stay under NRS 233B.140, the statute violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

II. NRS 233B.140 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.[7]

The Fourteenth Amendment to the United States Constitution mandates that no state may "deny to any

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[7] This statute serves no legitimate purpose. Why is a stay order issued automatically in every case for the administrative challenge of the driver's license revocation and not for appellate review? Any public safety argument must fall upon deaf ears. Nevada has a breath ignition interlock program which can be used here. Once the interlock device is installed, a vehicle will not start if the driver has consumed alcohol. The State improperly uses NRS 233B.140 as a tool to deny citizens access to the courts.

person within its jurisdiction the equal protection of the law." Where no "fundamental right" or "suspect classification" is implicated, the challenged legislation is reviewed under a rational basis standard. Under the equal protection provisions, a statute may single out a class for distinctive treatment only if such classification bears a rational relation to the purposes of the legislation. In *Reed v. Reed*, 404 U.S. 71, 75-76 (1971), the United States Supreme Court stated,

> The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of the statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." [Cite omitted]

This Court will not overturn legislation unless the treatment of different groups "is so unrelated to the achievement of any combination of legitimate purposes that can only conclude that the legislator's actions were irrational." *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 943 (1979). We have that situation here.

The stay process of NRS 233B.140 divides people into two classes: (1) those that obtain a stay order, and (2) those that do not. This classification operates to bar the latter class an opportunity to be heard in court. Those persons who are unable to obtain a stay order will have served their revocation period before having been heard on the merits and their appeals will be dismissed on

grounds of mootness. See *Langston, supra.* The impact is disparate. There is no rational basis in allowing some but not others access to the courts. NRS 233B.140 violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[8] Therefore, BLAIR'S request for relief must be granted.

III. THE NEVADA SUPREME COURT ERRED WHEN IT DISMISSED BLAIR'S APPEAL ON GROUNDS OF MOOTNESS.

In Nevada, individuals who have served the mandatory revocation of their driver's license, because of a Nevada Implied Consent violation, may reinstate their license. However, the reinstatement is not without significant consequences. For example, BLAIR suffers from the following collateral consequences:

> (i) He must file an SR-22 for a continuous period of three years, at a cost of thousands of dollars; failure to maintain continuous coverage results in immediate suspension or revocation of their driver's license **[NRS 485.230]**;
>
> (ii) He is subject to enhancement of the length of the revocation period for subsequent revocation actions **[NRS 483.560(5)(b)]**;
>
> (iii) He is subject to the loss of entitlement to a restricted license for any subsequent revocation action **[NRS 483.495, NRS 483.460(1)(b)(5)]**;

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[8] Even though *Langston, supra* was decided subsequent to the enactment of NRS 233B.140, the legislature has declined to amend or abolish the statute's effect.

(iv) He must take the written, driving and vision examinations **[NAC 483.260]**;

(v) He must pay license reinstatement fees which are exponentially higher **[NAC 483.260(3)]**;

(vi) He must serve a minimum of Thirty Days and up to Six Months in jail if driving before reinstatement **[NRS 483.560(2)]**, in addition to extensions of the revocation period for a conviction of driving before reinstatement **[NRS 483.460(1)(b)(5)]**;

(vii) He is required to pay a ***civil penalty*** of **$35.00** in accordance with **NRS 484.379(1)**, paid to the Department of Motor Vehicles (this money goes to the victims of crimes) and is not intended to make the DMV whole.

(viii) Adverse employment consequences and attendant financial consequences (i.e., loss of employment, wages, demotion).

This Court has repeatedly held that where the judgment results in collateral consequences, it is not moot. *Minnesota v. Dickerson*, 508 U.S. 366 (1993); *Lane v. Williams*, 455 U.S. 624 (1982); *Vitek v. Jones*, 455 U.S. 480 (1980); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *Sibron v. New York*, 390 U.S. 40 (1968); *Ginsberg v. New York*, 390 U.S. 629 (1968); *Carafas v. LaVallee*, 391 U.S. 66 (1968). A conflict new exists within the Ninth Circuit Court of Appeals. *See Graham v. State*, 633 P.2d 211 (AK 1981). (Held that even though the revocation period had run in driver's license revocation case, it was not moot for the following reasons: (1) higher insurance rates, (2) adverse employment consequences, (3) public importance and (4) it was capable of repetition but yet evading review). All

these collateral consequences, plus more, exist in Nevada. Nevada's Supreme Court has turned a blind eye to BLAIR'S collateral consequences. Clearly, the Nevada Supreme Court erred when it ordered BLAIR'S appeal dismissed on the grounds of mootness. All these consequences exist in Nevada. Nevada's Supreme Court has turned a blind eye to Blair's collateral consequences.

An additional exception to the mootness doctrine includes those controversies which are capable of repetition yet evading review. Those who are denied a stay are mooted out, yet this injury will recur. The dispute would only be mooted out as pertains to this particular plaintiff, but is entirely capable of repetition in relation to the other members of petitioner's class. Clearly, the Nevada Supreme Court erred when it ordered BLAIR'S appeal dismissed on the grounds of mootness.

CONCLUSION

Nevada has enacted a statutory scheme which allows a person to challenge the revocation of his driver's license in both the District and Supreme Court of Nevada. *See* NRS 484.387(3) and 233B.150. The Nevada Supreme Court conducts a de novo review of the administrative record. *Gandy v. State, ex rel. Division of Investigation Narcotics*, 96 Nev. 281, 607 P.2d 581 (1980). However, the right to be heard in the courts is illusory because of NRS 233B.140 and *Langston, supra*. Those who are unable to meet the criteria for a stay order will have their appeals

dismissed on the grounds of mootness.[9] Again see *Langston, supra*. Therefore, NRS 233B.140 violates the Fourteenth Amendment of the United States Constitution, both equal protection and due process clauses. Further, collateral consequences are attached to the driver's license reinstatement, thus it was error to hold that the mootness doctrine applied.

Under the current state of the law, anyone driving in Nevada can lose their driver's license and be denied access to the courts to challenge the license forfeiture. It is extremely difficult to get a stay order under NRS 233B.140. As a result, most individuals with valid issues have their appeals dismissed without ever being heard on the merits.[10] Therefore, the instant writ of certiorari must be granted.

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[9] Many cases are dismssed at the district court level for mootness.

[10] BLAIR is a perfect example. The federal ranger had absolutely no legal authority to revoke the driver's license using the Nevada Implied Consent Law. Yet, BLAIR was not allowed to have his case heard by the Nevada Supreme Court as mandated by NRS 233B.150.

APPENDIX

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAY ALAN BLAIR, Appellant, vs. THE STATE OF NEVADA, DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY, Respondent.	No. 33375 [File Stamp]

ORDER DISMISSING APPEAL

This is an appeal from a district court order affirming revocation of appellant's driving privileges. Relying on [sic] Langston v. State, Department of Motor Vehicles, 110 Nev. 342, 871 P.2d 362 (1994), the state has moved to dismiss this appeal as moot since appellant's license revocation period has ended. In *Langston*, we held the driver's appeal was moot because the revocation period had expired and we could not grant any effective relief.

Appellant opposes the motion, contending *Langston* was wrongfully decided. In support of his position, appellant raises the same arguments we rejected in *Langston*. Because appellant provides no reasons for revisiting our decision, or deciding the issue differently, we decline to do so.

Appellant also suggests an appeal from a license revocation should never become moot. Appellant contends the district court should always grant a stay pending judicial review because the district court could order installation of a Breath Ignition Interlock Device as a condition of the stay, thereby eliminating all risk to the public. There is no evidence in the record that appellant raised this issue in the district court, however, and appellant cannot now raise new issues in an attempt to avoid dismissal for mootness. Accordingly, we

ORDER this appeal dismissed.

/s/ _____
Maupin

/s/ _____
Agosti

/s/ _____
Becker

cc: Hon. Gene T. Porter, District Court
Attorney
Law Offices of John G. Watkins, Esq.
Clark County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAY ALAN BLAIR, Appellant, -VS- STATE OF NEVADA, DEPT. OF MOTOR VEHICLES AND PUBLIC SAFETY, Respondent.	CASE NO: 33485

APPELLANT'S OPPOSITION TO SATE'S MOTION TO DISMISS APPEAL

COMES NOW, Appellant, RAY ALAN BLAIR, by and through his counsel, JOHN GLENN WATKINS, ESQ., and moves this Honorable Court for an Order denying the State's Motion to Dismiss on the grounds that (1) the instant case has been assigned to the mandatory settlement conference pursuant to NRAP 16 and (2) ***Langston v. State, DMV/PS,*** 110 Nev. 342, 871 P.2d 362 (1994) has been wrongfully decided.

DATED this 31st day of December, 1998.

/s/ John G. Watkins
JOHN GLENN WATKINS, ESQ.

POINTS AND AUTHORITIES

A.

THE INSTANT CASE HAS BEEN ASSIGNED TO A SETTLEMENT CONFERENCE JUDGE PURSUANT TO NRAP 16.

The intent of NRAP 16 is to settle cases appealed to the Nevada Supreme Court. The settlement judge must be allowed to handle the case and make the appropriate recommendations. Dismissed is not settlement. To grant the State's Motion would undermine NRAP 16.

B.

THE *LANGSTON* CASE SHOULD BE RE-EXAMINED BY THIS COURT.[1]

A case is not moot if the judgment results in collateral consequences. ***Minnesota v. Dickerson,*** 508 U.S. 366 (1993); ***Lane v. Williams,*** 455 U.S. 624 (1982); ***Vitek v. Jones,*** 455 U.S. 480 (1980); ***Pennsylvania v. Mimms,*** 434 U.S. 106 (1977); ***Sibron v. New York,*** 390 U.S. 40 (1968); ***Ginsberg v. New York,*** 390 U.S. 629 (1068) [sic]; ***Caragas v. La Vallee,*** 391 U.S. 66 (1968). ***Langston*** showed numerous collateral consequences which resulted from her driver's license revocation. Therefore, the case is not moot.

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[1] Attached for convenience please find a copy of the Langston's opposition.

C.

THE STATUTORY SCHEME FOR A STAY ON JUDICIAL REVIEW VIOLATES DUE PROCESS ON ITS FACE OR IN THE ALTERNATIVE AS APPLIED.

Unless a stay is granted, the license revocation period expires before the court is scheduled to review the merits. Whether or not a court actually reviews the merits is directly related to the stay. Under current law, a stay can only be granted if the petitioner satisfies NRS 233B.140. Clearly, a person may not be able to meet the standard or threshold for a stay, yet if heard, would prevail on the merits. The current statutory scheme denies these individuals a review upon the merits and results in the State having the cases dismissed for mootness. A law or procedure which conditions judicial review upon being able to obtain a stay is not "meaningful" and violates due process under the Fourth Amendment. See ***Mathews v. Eldridge,*** 424 U.S. 319 (1976).

The loss of a driver's license creates an economic hardship on anyone, especially if their continued employment depends upon it. This is a denial of substantive, as well as procedural due process. The United States Court of Appeals for the Ninth Circuit held in ***Clements v. Airport Authority of Washoe County,*** 69 F.3d 321 (9th Cir. 1995) that,

> ***The right to procedural due process is "absolute,"*** and "the law recognizes the importance to organized society that those rights be scrupulously observed." ***Carey v. Piphus,*** 435 U.S. 247, 266-67, 98 S.Ct. 1042, 1054, 55 L.Ed. 252 (1978). Thus, ***the "absolute" right to adequate***

> ***procedures stands independent from the ultimate outcome of the hearing.*** (Emphasis added)

In additon, in ***Gulbranson v. City of Sparks, et al.***, 89 Nev. 93, 506 P.2d 1264 (1973), a civil, license revocation case, this Court held that,

> It is, of course, true that the portion of the proceeding seeking the return of the business license was mooted by the return of that license. [cites omitted]. ***The issue of damages, however, remained a viable issue in the case.***
>
> (emphasis added)

There are collateral economic consequences/damages to every person who is denied judicial review. These are set forth in the attached brief in ***Langston***. For all of the above and foregoing reasons, the State's motion to dismiss should be denied and this Honorable Court should re-examine its decision in ***Langston***, in light of the 9th Circuit's decision in ***Clements*** and this Court's own decision in ***Gulbranson***.

D.

THERE IS NO RISK TO THE PUBLIC BECAUSE A BREATH INTERLOCK DEVICE CAN BE REQUIRED AS A CONDITION OF THE STAY PENDING REVIEW.

A court may order installation of a Breath Ignition Interlock Device [B.I.I.D.] as a condition for issuance of a stay.[2] The device will prevent the Petitioner or Appellant

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[2] The BIID is a device which is easily installed on vehicles. Its installation requires the driver to breath into an alcohol

from driving his vehicle while consuming alcohol. Therefore, a stay pending review should issue regardless of whether a person can satisfy the difficult requirements for the issuance of a preliminary injunction. Again, the State's Motion to dismiss for mootness must be denied.

Respectfully submitted,

/s/ John G. Watkins
JOHN G. WATKINS, ESQ.

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measuring device. This device determines whether or not the vehicle will start based upon the presence of alcohol or the lack thereof. Once the vehicle starts, the vehicle requires the driver to breath into the device at random intervals, while driving. If the device detects the presence of alcohol (even low levels) the device will cause the vehicle's horn to sound, which is a warning to the driver that the device is going to turn off the vehicle's motor. The vehicle can not be restarted again without a technician reseting the device. All breaths are recorded on the machine for examination by the agency at their discretion. As an additional safety measure, a sticker is provided by the Department of Motor Vehicles which goes on the driver's license indicating that they are restricted to vehicles with the device installed.